

FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

Flora Nicholas and Paul Gayter, in	)	
their own right and as next friend	)	
of S.G.,	)	
	)	
Plaintiffs,	)	
	)	Civ. No. 2001-147
v.	)	
	)	
Wyndham International Inc., Wyndham	)	
Management Corporation, Sugar Bay	)	
Club & Resort Corporation, Rik	)	
Blyth and Bryan Hornby,	)	
	)	
Defendants.	)	
_____	)	

ATTORNEYS:

Daryl C. Barnes, Esq.  
St. Croix, U.S.V.I.  
Joseph Petrosinelli, Esq.  
Enu A. Mainigi, Esq.  
Washington, D.C.  
*For the plaintiffs,*

Douglas C. Beach, Esq.  
St. Thomas, U.S.V.I.  
*For defendants Wyndham International Inc., Wyndham  
Management Corp., Sugar Bay Club & Resort Corp., and  
Rik Blyth,*

John A. Zebedee, Esq.  
St. Thomas, U.S.V.I.  
Ann C. Lebowitz, Esq.  
Philadelphia, Pa.  
*For defendant Bryan Hornby.*

**ORDER**

Gomez, J.

At a hearing held on this matter on Tuesday, April 6, 2005, defendant Bryan Hornby presented an oral motion pursuant to Federal Rule of Appellate Procedures 8(a) to stay this Court's proceedings pending an appeal. The appeal concerns this Court's April 25, 2005, affirmation of Magistrate Judge George W. Cannon's order denying Hornby's motion to stay pending the outcome of criminal proceedings.<sup>1</sup>

The Third Circuit Court of Appeals has annunciated a clear standard for whether to grant a stay of a district court's order pending an appeal under Federal Rule of Appellate Procedure 8(a). That standard requires this Court to take into account "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceedings; and (4) where the public interest lies."

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<sup>1</sup> Hornby moved the Court to stay all proceedings in this case pending the outcome of criminal investigations in Minnesota, Puerto Rico, and the United States Virgin Islands. This broad request included all unrelated pending, and even yet uninitiated, criminal investigations. Magistrate Judge Cannon denied the stay, reasoning, among other things that 1) the criminal investigations did not overlap the issues in this civil case, 2) the defendant has not been indicted in any of those jurisdictions, and 3) the plaintiff had an interest in proceeding expeditiously in this manner.

*Republic of the Phillippines v. Westinghouse Electric Corp.*, 949 F.2d 653, 658 (3d Cir. 1991).

Regarding the first factor, Hornby has not made a "strong showing" that he is likely to succeed on the merits of his appeal. This Court does not believe that the motion to stay is an appealable order. Under 28 U.S.C. section 1291, appellate courts have jurisdiction only over a final judgment or order. See 28 U.S.C. § 1291 ("the courts of appeals other than the United States Court of Appeals for the Federal Circuit shall have jurisdiction of appeals of all final decisions of the district courts of the United States . . . and the District Court of the Virgin Islands"). The denial of a motion to stay is ordinarily not a final appealable order. See *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 271-72 (1988) (finding district court's denial of motion to stay was not immediately appealable "since the order in question does not end litigation but ensures that it will continue in district court.").

At the hearing, Hornby argued that the collateral order doctrine applies to this appeal. The collateral order doctrine operates to expand what is considered a final appealable order under limited circumstances. The collateral order doctrine "relaxes the strict standard of finality by permitting [the Court] to entertain appeals from certain orders that would not

otherwise be appealable final decisions." *Martin v. Brown*, 63 F.3d 1252, 1258 (3d Cir. 1995) (citations omitted). The order sought to be appealed must (1) conclusively determine the disputed question, (2) resolve an important issue completely separate from the merits of the action, and (3) be effectively unreviewable on appeal from a final judgment. *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978). Failure to satisfy any one prong defeats collateral order jurisdiction. *Gulfstream Aerospace Corp.*, 485 U.S. at 276. It is this Court's opinion that the doctrine is not applicable to the case at hand. There is no reason why the denial of Hornby 's request for a stay pending the completion of all unrelated criminal proceedings would be precluded from appellate review after a final judgment in this case is entered.

Not only does this Court not believe that this issue is appealable, the underlying merits of Hornby's motion are also not likely to succeed. Whether or not to grant a stay of proceedings is committed to the sound discretion of this Court. As Magistrate Judge George W. Cannon's order specifically denotes, the issues in this pending civil case are unrelated to the criminal investigations in Puerto Rico, Minnesota, and the United States Virgin Islands that Hornby uses as a rationale for his motion to stay. The subject of these criminal investigations

concern other alleged minor victims, not S.G., the plaintiff in this civil trial. Hornby has already been criminally tried and convicted on his assault of S.G., the issue at the center of this civil trial.

Second, Hornby has not shown why he would be irreparably harmed if the stay is not issued. Third, the stay would substantially injure the other parties in these proceedings. Trial is set to begin in this case in less than one week. Factual discovery has been closed for more than two years. Delaying a trial at this late juncture prejudices both the plaintiffs and the other defendants.

Finally, the public interest in the administration of justice is served by not indefinitely delaying this civil proceeding. Under Hornby's reasoning, there is no definite time at which the criminal proceedings in Minnesota, Puerto Rico, and the United States Virgin Islands regarding these unrelated cases would end. Thus, granting a stay indefinitely postpones the Court's resolution of this dispute for reasons wholly unrelated to this matter.

For the foregoing reasons, Hornby's motion to stay pending an appeal pursuant to Fed. R. App. P. 8(a) is hereby **DENIED**.  
Annunciate

ENTERED this 28th day of April, 2005.

For the Court

\_\_\_\_\_/s/\_\_\_\_\_  
Curtis V. Gomez  
District Judge

**ATTEST:**  
**WILFREDO MORALES**  
**Clerk of the Court**

**By:**\_\_\_\_\_/s/\_\_\_\_\_  
**Deputy Clerk**

**Copies to:**  
Hon. G.W. Cannon via fax (773-5416)  
Daryl Barnes, Esq. via fax (773-2785)  
Douglas C. Beach, Esq. via fax (776-8044)  
John A. Zebedee, Esq. via fax (776-3470)  
Joe Petrosinelli, Esq. via fax only  
(202-434-5029)  
Ann C. Lebowitz, Esq. via fax only  
(215-789-3113)  
Mrs. Jackson  
Mrs. Schneider  
Kimberly D'Eramo via fax (773-5416)  
Jeffrey Corey